1950

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REV(T) Part- XV
dt 16/2/57 R'Hr B.e.D
Bar B

Karnatak

B Class

E.R.S. Dep No. 118
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Sub:- Administration of ~~Executee~~
Properties of executee leaving
From Pakistan

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Bom Hdqrs (K)
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Karnatak

B Class

File No R141
Part- XV

Copy of letter No.5770/Genl/50, dated the 27th July 1950, from the Custodian of Evacuee Property, Government of India, Ministry of Rehabilitation, New Delhi.

Subject:- Working of the Evacuee Property Act.

I have the honour to state that as a result of detailed examinationof working of the Evacuee Property Act, certain defects in its administration have come to notice. As evacuee property legislation is an extra-ordinary piece of law, it is very necessary to administer it with care so that complaints from either side are avoided. While it is the duty of the Custodian to see that no evacuee property escapes scrutiny, it is also necessary for him to ensure that no harassment is caused and no genuine cause of complaint arises.

2. Service of notices.- It has been noticed that substitute-service has been resorted to rather frequently, without making an effort to carry out a personal service.- The rules on the subject are quite clear. It has been laid down that a notice has tobe served, primarily, personally and that substitute service has to be resorted to only where personal service is not practicable.- This rule should be strictly observed. It is necessary to state that the Custodian must be satisfied that the information in his possession as a result of the survey carried out, prima-facie, discloses that the property or any interest therein is evacuee property, before a notice can be served. This provision of the rules must be strictly complied with.

3. Fresh proceedings in cases where a person has already been declared non-evacuee.

It has been brought to notice that proceedings have been started without any adequate cause in some cases, where a person has already been declared non-evacuee. Occasionally, this may have been due to carelessness or for lack of keeping record of persons declared non-evacuee. It is suggested that a list of persons declared non-evacuee should be kept by every Custodian/Deputy Custodian and circulated to all the subordinates so that while starting a fresh case it may be checked up to see that no fresh case is being started against a person who has already been declared non-evacuee. If any proceedings against such persons are contemplated, it is necessary to examine the previous decisions, to make sure that a fresh cause for action has arisen, or fresh evidence has come to light which justifies the starting of such proceedings. In all such cases, permission to start such proceedings should be taken from an officer not below the rank of an authorised Deputy Custodian.

4. Suitable investigation before a case is started.

It has been noticed that cases have sometimes been started without adequate investigation, and without a prima facie case being made against the person concerned. It is suggested that where the assistant Custodians are divided into two categories- Executive and Judicial - the Executive Assistant Custodian must prepare in writing thegrounds on which it is proposed to take action against any person, and send it on to the Judicial Assistant Custodian. The latter should scrutinise the case, and , if he agrees, notice should be issued and necessary action taken under the law. Where there is such separation, it would be advisable for the Assistant Custodian to

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scrutinise carefully the facts of the case to make sure that a good prima-facie case exists against the person against whom it is intended to start proceedings.

5. Payment of rents.- Representations have been received to the effect that tenants are being asked in many cases to pay rent for the period for which they have actually paid the landlord. On the other hand, it has been stated that false and forged receipts are very often produced by the tenants. Such cases may fall under the one of the following categories -

a) Where the tenant alleges to have paid the rent to the evacuee owner or his agent, subsequent to the property becoming an evacuee property.

b) Where the payment of the rent has been made before the time the property becomes evacuee property.

In so far as cases falling under category (a) are concerned, the Custodian is precluded under the Law from recognising such a payment. But in the cases falling under category (b), it would be a question of facts. On the evidence placed before him, the Custodian should decide in each individual case whether the payment had in fact been made before the property became evacuee property. If it is decided that the payment has been so made, the would have no option but to recognise it.

To avoid hardship, it is considered that the payment of arrears need not necessarily be insisted upon in one lump sum. Those who are willing to pay up the current rent as well as the arrears, may be allowed to clear the arrears, by easy instalments.

6. 'First informants':- Speaking generally, a practice has been adopted under which first informants are given the right of prior allotment of any property which is declared evacuee property as a result of information given by them. While this practice has certain advantages, it has also certain obvious disadvantages. In past cases it would obviously be improper to go back upon the commitment already made, particularly as in many cases the first informants have spent a good deal of time, and some times even money, to fight out such cases. But for the future it is felt that the system should not be continued indefinitely. It would be much better to engage extra staff, if necessary, to locate evacuee property, than to rely, to any great extent, on first informants. Slowly the present practice should be allowed to fall into disuse.

7. Delay in disposal.- Complaints have been received that the Custodians staff have some time taken a considerable time in the disposal of cases. It has been noticed, however, on investigation, that very often it is the parties themselves who, by seeking adjournment or otherwise, delay proceedings considerably. It is difficult to lay down any rigid rule on the subject as undue expedition might be harmful to the cause of the parties themselves. While the parties should, therefore, be given full opportunity to contest their cases, and defend themselves, no unnecessary delay should normally occur in deciding the cases.

No.R.141/29141-B.
Rehabilitation Deptt.
Fourth floor, Mercantile Bank Bldg.
Mahatma Gandhi Road, Fort, Bombay(1), 16thAug.1950.
Forwarded with.....